

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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BRANDEIS UNIVERSITY and	)	
GFA BRANDS, INC.,	)	
	)	Nos. 1:12-cv-01508
<i>Plaintiffs,</i>	)	1:12-cv-01509
	)	1:12-cv-01511
v.	)	1:12-cv-01513
	)	
KEEBLER CO.;	)	
FAMOUS AMOS CHOCOLATE CHIP	)	
COOKIE COMPANY, LLC;	)	
MURRAY BISCUIT CO. LLC;	)	Judge Richard A. Posner.
VOORTMAN COOKIES LTD.;	)	
BREMNER FOOD GROUP, INC.;	)	
COOKIE SPECIALTIES INC.;	)	
TOPCO ASSOCIATES LLC;	)	
and NESTLÉ USA, INC.,	)	
	)	
<i>Defendants.</i>	)	

**ORDER OF JANUARY 23, 2013**

The plaintiffs have requested leave to file a supplemental expert report from Dr. Peter Jones to update his analysis of the fatty acid levels in the accused products in response to my January 18, 2013 *Markman* order. Although that order explains how to measure the weight of fatty acids under the '192 patent, it simply adopts the measurement method used in the patent itself. The plaintiffs could have solicited this method from Dr. Jones at the time of his opening report. They could have sought clarification of my earlier *Markman* order at that time or asked Dr. Jones to discuss alternative methods in his reports. Furthermore, Keebler's *Daubert* motion, filed December 31, 2012, notified the plaintiffs that they disputed Dr. Jones's method of measuring fatty acid levels. In their January 7, 2013 response, the plaintiffs could have asked to supplement Dr. Jones's testimony.

They waited instead until just before the deadline for summary judgment motions. Because they have not shown cause for this delay, Dr. Jones may not offer new

opinions that may prejudice the defendants, including any discussion of the doctrine of equivalents.

The plaintiffs argue that updating Dr. Jones's calculations to comport with my January 18, 2013 *Markman* order will not prejudice the defendants because they have already performed the same calculations themselves. By close of business on Thursday, January 24, 2013, Keebler shall respond to Plaintiff's motion as pertains to such calculations.

A handwritten signature in black ink, appearing to read "Richard A. Jones". The signature is fluid and cursive, with a long horizontal stroke at the end.

United States Circuit Judge

January 23, 2013